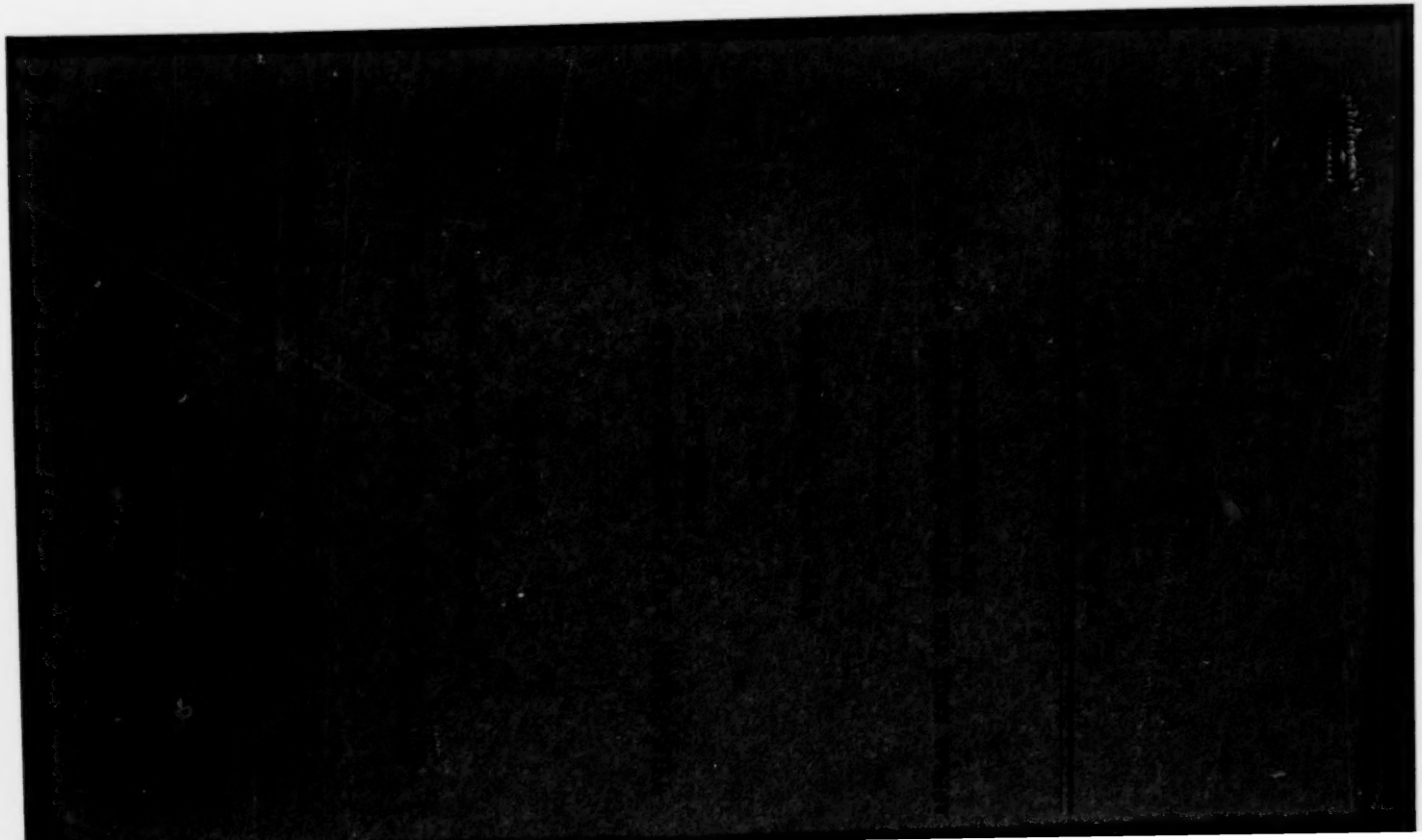

(18,369.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 221.

THE UNION AND PLANTERS' BANK OF MEMPHIS, APPELLANT,

vs.

THE CITY OF MEMPHIS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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1 *Transcript of Record.*

Filed Apr. 3, 1899. John B. Clough, Clerk.

In the Circuit Court of the United States for the Western Division of the Western District of Tennessee, at Memphis. In Equity.

THE UNION & PLANTERS' BANK, Plaintiff,
vs.
THE CITY OF MEMPHIS and JOHN H. ALSUP, as Trustee of Shelby County, Tennessee, Defendants. } 532.

To the honorable the judges of the circuit court of the United States for the sixth circuit:

Your orator, The Union & Planters' Bank, brings this its bill of complaint against The City of Memphis, a municipal corporation by the laws of the State of Tennessee, and John H. Alsup, as trustee of the county of Shelby, and thereupon complaining it says:

That it is a banking corporation, having its situs at Memphis aforesaid, operating under a special charter granted by the State of Tennessee on the 20th day of March, 1858, and amended by an act passed on the 12th day of February, 1869, and from the date of its organization it has paid to the City of Memphis all the taxes which were assessed against it by the City of Memphis, which it was legally required to do.

That it was for years adjudged, by an unbroken line of decisions in Tennessee, as exempt from the payment of ad valorem taxes to the State of Tennessee, to the county of Shelby, and to the city of Memphis, on account of its shares of stock, other than the charter tax annually to the State of Tennessee. That it has been in

2 many litigations, involving the claim on behalf of the city of Memphis, State of Tennessee and county of Shelby, that it was liable to pay to them, and each of them, ad valorem taxes on different subjects of taxation, and in each and every of said suits your orator maintained that under the clause of its charter, which provided that it should pay annually to the State one-half of one per cent. on each share of capital stock subscribed, it should be exempt from the payment of any other or further tax, either to the State of Tennessee, county of Shelby or the city of Memphis, whether ad valorem taxes or license or privilege taxes.

Your orator further showeth to your honors that on the 22nd day of October, 1891, the State of Tennessee, for the use of the City of Memphis, and the City of Memphis exhibited an original bill in the chancery court of Shelby county, Tennessee, that court having jurisdiction of the subject-matter of the said suit against it, and therein, the said City of Memphis claimed that for the year 1897, its capital stock was assessed for taxation, both by the regular assessor and by the county trustee of Shelby county, at the sum of $400,000.00. That the municipal tax rate for that year was $2.35 on each $100.00,

and the amount due from your orator on account of said capital stock was the sum of $9400.00, with interest from the 1st day of May, 1887.

That for the year 1891 the capital stock of your orator was assessed at the sum of $456,000.00, and that the total tax rate on every $100.00 of property for that year, levied by the State for the use of the city of Memphis, was $1.75 on every $100.00 of property, and that your orator was indebted for municipal taxes in the sum of $7980.00, with interest thereon from the 1st day of May, 1891.

It was further averred in the aforesaid bill of complaint that by section 14 of the revenue laws of the State, passed in 1887, the same being chapter 2 of the acts of that year, it was enacted as follows:

"Be it further enacted, That this act shall not be so construed, and it shall not co-operate as to exonerate or release from taxation, any company or corporation whose charter exempts stock and the shares thereof from taxation, but it is hereby enacted that in all cases where such stock is exempted, such company or corporation shall be assessed in such way as may be lawful; and, in all cases in which, by the terms or legal effect of the charter, the shares of stock in any corporation are wholly or partially exempt from taxation, or in which a rate of taxation on the shares of stock is fixed and
3 prescribed and declared to be in lieu of all the taxes for State, county and municipal purposes, shall be assessed and levied at a rate uniform with the rate levied upon other taxable property upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate market value of all the shares of stock in said corporation, including the net surplus."

The bill also averred that notwithstanding a provision of said section, the capital stock of your orator was not assessed for the years 1888, 1889 or 1890. That ascertaining this fact, the county trustee of Shelby county, as he was by law authorized to do, duly assessed its capital stock for the years aforesaid, and the said City of Memphis was entitled to have and recover on account of the assessments aforesaid of your orator, taxes on its capital stock as follows: For the year 1888, $9400.00; for the year 1889, $9870; for the year 1890, $11,926.25, with interest thereon from the 1st of May of the year for which the assessments were made.

The bill further averred that your orator claimed an exemption by virtue of its original charter, and the amendments thereof, of its capital stock from taxation, and also that the aforesaid provisions of the act of 1887 had been continued in force by the succeeding acts of the legislature of the State of Tennessee, and that under the aforesaid acts, the capital stock of your orator in its hands was subject to ad valorem taxes to the city of Memphis.

The bill further set forth that the exemption claimed by your orator was in these words: "That said company shall pay to the State of Tennessee an annual tax of one-half of one per cent. on each share of stock subscribed, which shall be in lieu of all other taxes."

The cause thereupon came on to be heard upon a demurrer interposed by your orator, which is in these words:

"In Chancery Court of Shelby Co., Tennessee.

STATE OF TENNESSEE, Use, etc.,
vs.
UNION & PLANTERS' BANK & S. P. READ, Cashier. } 8087, R. D.

Defendants demur to the bill filed against them on 22d of
4 Oct., 1891, as entered above on the rule docket. The ground of this demurrer is that the object sought by this bill is to enforce the payment of taxes by said bank in excess of the sum of an annual tax of one-half of one per cent. on each share of stock subscribed, which is the tax by the terms of the charter contract between said bank and the State of Tenn., which shall be in lieu of all other taxes. Defendant says said bank is not liable for nor bound to pay the taxes demanded and sought to be so collected, and that defendant Read, sued as the cashier, cannot be required to answer said bill nor make the discovery sought from him in and of the effort to collect such taxes.

(Signed) CRAFT & CRAFT,
Solicitors for the Defendant."

Before the Hon. J. S. Galloway, sitting by interchange with the chancellor, who finally adjudged and decreed the demurrer to be well taken upon all the points therein set out.

Said City of Memphis appealed from the aforesaid decree and judgment to the next term of the supreme court of Tennessee for the western district of Tennessee, and filed a transcript of the record in said court, and the case was heard by the said supreme court upon the said appeal, when the court, after full consideration, finally adjudged and decreed on the 7th of June, 1892, that there was no error in the decree of the court below, and expressly adjudged all the points covered by and embraced in the opinion filed by the judge who delivered the opinion. All of which will more fully appear from a certified copy of the record, which is herewith filed and made part of this bill, marked Exhibit A, but which need not be copied.

And your orator further shows to the court that in the opinion of the learned judge he expressly held, considering the decisions of the supreme court of Tennessee, and the decisions of the Supreme Court of the United States, and giving them the controlling weight to which they were entitled, that the charter tax of one-half of one per cent. is in lieu of all other taxes, whether against the bank or its capital stock, or against owners on account of their shares of stock.

Your orator further showeth to your honors that the aforesaid judgment in its favor was based upon the identical claim of exemption now asserted by it in order to defeat the taxes now in question,

and to cancel the assessment against it hereinafter to be set
5 forth, and the judgment and decree aforesaid adjudged its claim to exemption upon the identical same facts and conditions as those hereinafter presented, and your orator is advised and insists that the question of its exemption from the payment of ad valorem taxes to the City of Memphis on account of its capital stock, has been finally judicial- determined not to exist because of the judicial construction put upon its exemption in the suit to determine that question between it and the said City of Memphis.

And further complaining, showeth your orator unto your honors, that by chapter 120 of the Acts of 1895, and section — thereof, it was provided that no taxes should thereafter be assessed upon the capital stock of any bank or banking association, but that the shares of stock should be assessed to the individual shareholder, and that under the aforesaid law it was adjudged by the supreme court of the State of Tennessee that its capital stock was not subject to taxation.

Your orator further showeth to your honors that by section 16 of chapter 1 of the Acts of 1887, the General Assembly of the State of Tennessee passed an act which provided as follows:

"Be it further enacted, That this act shall not be so construed, and shall not so operate, as to exonerate and release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation; but it is hereby enacted that in all cases where such stock is ex- (*sic*).

Your orator further showeth to your honors that the aforesaid judgment in its favor was based upon the identical claim of exemption now asserted by it in order to defeat the taxes now in question, and to cancel the assessment against it hereinafter to be set forth, and the judgment and decree aforesaid adjudged its claim to exemption upon the identical facts and conditions as those herein presented. And your orator is advised and insists that this question of its exemption from the payment of ad valorem taxes to the City of Memphis on account of its capital stock, has been thus finally judicially determined in its favor to exist, by a judicial construction of its exemption in the aforesaid suit to determine that very question between it and the said City of Memphis.

And further complaining showeth your orator unto your honors that by chapter 120 of the Acts of 1895 and section 10 thereof, it was provided "that no tax shall hereafter be assessed upon the capital of any bank or banking institution * * * but the share-
6 holders in such bank or other association shall be assessed and taxed upon the market value of their shares of stock therein."

Under the section above, it was also adjudged by the supreme court of the State of Tennessee, that its capital stock was not subject to taxation, and in a suit between said City of Memphis and your orator.

Your orator further avers that subsequently it was enacted as follows: "Be it further enacted, That this act shall not be so construed, and shall not so operate, as to exonerate and release from taxation any company or corporation whose charter exempts stock and shares

thereof from taxation; but it is hereby enacted that in all cases where such stock is exempted, such company or corporation shall be assessed in such way as may be lawful; and in all cases in which, by the terms or legal effect of the charter, the shares of stock in any corporation are wholly or partially exempt from taxation, or in which a rate of taxation on the shares of the stock is fixed and prescribed, and declared to be in lieu of all other taxes for State, county and municipal purposes, shall be assessed and levied at a rate uniform with the rate levied upon other taxable property, upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate market value of all the shares of stock in said corporation, including the new surplus; provided, however, that where the State has provided, in the charter of any such corporation or company, that it shall pay a stated per cent. on each share of stock subscribed, annually, to the State, which shall be in lieu of all other taxes, it shall be entitled annually to a credit therefor upon its assessment of its capital stock, as hereinbefore provided." Section 16 of chap. 1, Acts 1897.

That afterwards, the value of its capital stock was assessed under the aforesaid section at $132,000.00, and the City of Memphis claims that it is liable to it for ad valorem taxes on said assessment for the year 1899, in a sum exceeding $2000.00, exclusive of interest and costs.

Your orator avers that it is contractually exempt from the payment of any ad valorem taxes to the City of Memphis, resulting from the aforesaid provision in its charter, and it also avers that the fact of such exemption was conclusively determined by the presumption of the thing adjudged, resulting from the judgment and decree previously rendered between it and the said City of Memphis, and
7 yet, notwithstanding its aforesaid contractual exemption, and such conclusive determination of such exemption by the presumption of the thing adjudged between it and said City of Memphis, the said City of Memphis is now attempting to enforce the aforesaid assessment and collect a tax based thereon, to the impairment of the obligation of the contract between your orator and the State of Tennessee, which it is advised and avers is protected by the contract clause of the Constitution of the United States.

And your orator further avers that the said John H. Alsup is county trustee of the county of Shelby, in the State of Tennessee, and by virtue of his office, the duty is imposed upon him to collect ad valorem taxes due to the City of Memphis.

Wherefore, in consideration of the premises, your orator prays that the City of Memphis and John H. Alsup, county trustee and *ex officio* collector of municipal taxes for the City of Memphis, be cited to appear and answer the allegations of this bill, conformably to the practice of this court; and that on final hearing your orator have a decree canceling the aforesaid assessment and establishing, as between it and the said City of Memphis, that it is contractually exempt from thelpayment to the said City of Memphis of ad valorem taxes on its capital stock; and all such other and further relief as

may be suitable and proper in the premises, and that a restraining order issue *pendente lite* prohibiting the said John H. Alsup from any attempt to collect or enforce the said assessment until the final decision of this cause.

CANAIL & McKELLAR AND
COOPER & WADDELL,
Sol's for Complainant.

EXHIBIT "A."

STATE OF TENNESSEE, }
Shelby County. }

Be it remembered that at a term of the chancery court of Shelby county, State aforesaid, began and held at the court-house, in the city of Memphis, in and for said county, on Monday, the 5th day of October, 1891, the same being the first Monday in October, 1891—present and presiding, the Hon. J. S. Galloway, probate judge,
8 sitting by interchange with Hon. W. D. Beard, chancellor, being incompetent—the following proceedings were had, to wit:

Original Bill No. 8087, *R. D.*

Filed 22d day of Oct., 1891.

THE STATE OF TENNESSEE, for the Use of the CITY OF MEMPHIS, and the City of Memphis
vs.
THE UNION & PLANTERS' BANK and S. P. READ.

To the Hon. W. D. Beard, chancellor of the chancery court of Shelby county, Tennessee:

Complainants would respectfully state and show to the court as follows, to wit:

I. The above-named defendant, The Union & Planters' Bank, is a banking corporation organized under the laws of the State of Tenn., and having its situs and place of business in the city of Memphis, Shelby county, Tenn. By an act of the legislature of said State, passed on the 20th day of March, 1858, the Desoto Insurance & Trust Company was incorporated with all the powers, privileges and immunities and subject to all the pains, penalties and forfeitures of the act establishing the Bluff City Insurance Company of Memphis. Said act of incorporation will be found in the 12th section of chapter 166 of the Acts of 1857–'8.

The said act incorporating the Bluff City Insurance Company of Memphis will be found in the same chapter, to wit, 166, of the Acts of 1857–'8, and sections one to ten thereof, inclusive. By the tenth section of said act incorporating the Bluff City Insurance Company it was enacted, "that said company shall pay to the State of Tenn. an annual tax of one-half of one per cent. on each share of stock subscribed, which shall be in lieu of all other taxes."

Said Desoto Insurance & Trust Company was empowered to do a general fire and life insurance business, with a capital stock of not less than $300,000. By the subsequent act of the legislature, passed Feb'y 12th, 1869, said corporation was authorized to abandon
9 the business of insurance and adopt that of banking, under the name and style of the Union & Planters' Bank of Memphis, with the privilege of increasing their capital stock to a sum not exceeding $1,000,000, and retaining "all their present rights, privileges, and immunities, excepting that of insurance." Shortly after the date of said amending act the privilege aforesaid was accepted by the stockholders of the corporation, the name changed to that of the Union & Planters' Bank of Memphis, the business of insurance abandoned and that of banking adopted, and from that time forth to the present day the said corporation has been engaged in the banking business in the city of Memphis, its banking-house and business being located and carried on in the 4th ward of the city, the capital, under the privilege granted by said amending act, being increased to and has been since that time maintained at $600,000, the same being divided into shares of $100 each.

For the year 1887 the capital stock of the defendant company was duly assessed both by the regular assessing officer and by the county trustee at the sum of $400,000.00; the municipal tax rate for that year $2.35, and the amount due from the defendant bank upon the theory that the shares of stock therein are exempt from taxation in the sum of $9,400.00, with interest from May 1st, 1887. For the year 1891 the capital stock of said Union & Planters' Bank in Memphis was assessed at the sum of $456,000. The State of Tennessee for that year levied a total tax rate of $1.75 on every $100.00 of property in the city of Memphis, for the use of said city, and the said defendant corporation is therefore indebted to the State for the use of said city or to said city directly in the sum of $7,980, the unpaid tax on the capital stock aforesaid for said year 1891, and the sum last aforesaid bears interest at the rate of six per cent. per annum from the 1st day of May, 1891.

III. By section 14 of the general revenue laws of the State, passed in 1887, the same being chapter 2 of the Acts of that year, it was enacted as follows, to wit: "Be it further enacted, That this act shall not be so construed, and shall not so operate, as to exonerate or release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation; but it is hereby enacted that in all cases where such stock is exempted such company or corporation shall be assessed in such way as may be lawful; and in all cases in which by the terms or legal effect of the charter, the shares of the stock in any corporation are wholly or partially exempt from taxation, or in which a rate of taxation
10 on the shares of stock is fixed and prescribed and declared to be in lieu of all the taxes for State, county and municipal purposes, shall be assessed and levied at a rate uniform with the rate levied upon other taxable property upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate market value

of all the shares of stock in said corporation, including the net surplus."

But, notwithstanding the provisions of said section, the capital stock of said corporation was not assessed for the years 1888, 1889 or 1890. Ascertaining this fact, the county trustee of Shelby county, as he was by law authorized to do, has duly assessed paid capital stock for the year aforesaid as follows, to wit:

For the year 1888	$400,000
For the year 1889	404,000
For the year 1890	675,000

For the year 1888 the city ad valorem was $2.35 on the $100.00. For the year 1889 the ad valorem taxation in and for the said city was $2.35 on the $100.

For the year 1890 the ad valorem taxation in and for said city levied by the State was $2.35 on the $100.00, so that said defendant corporation for the years aforesaid is indebted to complainant City of Memphis, or to the State for its use in the sums following, to wit:

For the year 1888	$9,400 00
For the year 1889	9,870 00
For the year 1890	11,926 25

Each of the several amounts aforesaid bears interest from the first day of May of the year for which the tax was levied.

IV. The defendant corporation claims that by virtue of its original charter and amendments thereto its capital stock is exempt from taxation.

Said capital stock is assessable and taxable under sec. 14 aforesaid of chapter 2 of the Acts of 1887, the said section having been continuously in force since said enactment to the present time.

For the year 1872 the State, county of Shelby, and city of
11 Memphis, under the legislation of the State then in force undertook to assess and tax as other property was assessed and taxed for that year the shares of the stock in the hands of the stockholders of said company. This effort to tax said shares of stock was resisted by said shareholders; litigation ensued in the second chancery court of Shelby county, Tenn. The controversy in that court was determined in favor of the shareholders and against the power of the State, county and city to tax the shares of stock, and appeal therefrom was taken to the supreme court of the State, in which the decree of said chancery court was reversed and a decree rendered in favor of the power of the State to tax said shares, from which last decree a writ of error was sued out from the Supreme Court of the United States, and under a hearing in that court the decree of the supreme court of Tenn. was reversed, the case remanded to that court with directions to enter a decree affirming the decree of the second chancery court of Shelby county negativing the power to tax said shares of stock in the hands of the stockholders. Complainants are advised that the capital stock in the hands of the corporation and the shares of stock in the hands of the stockholders are

separate and distinct subjects of taxation; that in the absence of any exemption clause it was without the power of the State, without subjecting such legislation to the objection of double taxation, to have taxed both the capital stock of the corporation and the shares of stock in the hands of the stockholders; that the charter tax or bonus, or whatever else it may be called, of one-half of one per cent. to be paid to the State is a tax upon the shares of stock, and that the language, "in lieu of all other taxes," means in lieu of all other taxes on the shares of stock. It has no effect, as complainant is advised and charges, to exempt the capital stock of the corporation from taxation.

V. Complainants are advised that under the provisions of the act of 1887 aforesaid, which act, so far as is material to the questions here involved, has been continuously in force, the capital stock of said corporation or the shares of stock in the hands of the stockholders is or are taxable. They are further advised that the immunity and exemption embraced or claimed to be embraced in the charter of said defendant corporation cannot operate to exempt both the shares of stock and the capital stock in the hands of the corporation from taxation. Being advised and believing that both the corporation and the capital stock and the shares of stock could not successfully claim the exemption from taxation, the assessing officers of the State have from year to year since and including the year
12 1887 demanded of the proper officers of said corporation a list of the names of the persons owning the shares of stock therein on the 10th day of January of each year, but the said corporation, by its officers, claiming that the shares of stock were not subject to taxation, have refused to furnish the names of the shareholders in said corporation when demanded as aforesaid. The said officers accordingly for the years 1889 and 1890 assessed the shares of stock in the following form, to wit:

"Bank, Union & Planters'.

"Unknown shares and stock, 6,000 shares, $404,000," and the assessment for the year 1890 was made upon "the unknown owners of 6,000 shares of stock of Union & Planters' bank—valuation $675,000."

Complainants are not informed who are the owners of said shares of stock. They are informed that it is claimed in their behalf by the officers of the bank representing them that the said shares of stock are not taxable, and, even if taxable, the assessment is void for indefiniteness and uncertainty.

To the end that complainants may fairly and properly test the question as to whether, by legal effect of the charter of the defendant corporation, both the shares of stock in the hands of the stockholders and the capital stock in the hands of the bank are exempt from taxation. S. P. Read, cashier of said bank and the custodian of its books now and for many years heretofore, including the year 1887, is made a defendant hereto, and is required in his answer to state, under oath, from the books of said defendant corporation, the names of all persons, firms, or corporations owning shares of stock in said bank on the 10th day of January of each and every year, and the amount

held by each since and including the year 1887. It is the purpose of the complainant, when the name of such shareholders shall be furnished in the manner aforesaid, to have said shares of stock assessed for each of the years aforesaid and to bring the shareholders before the court in this proceeding by such amended and supplemental pleadings as may be necessary. Complainants do not claim that both the shares of stock in the hands of the shareholders and the capital stock in the hands of the corporation was undertaken to be taxed by the legislature of the State, but they do claim that for and since the year 1887 the revenue laws of the State provided generally that the corporate property in the hands of the corporation should not be taxed, and that the shares of stock in such cor-
13 poration should be assessed to and taxed to the shareholders at their market value.

It was further provided by said act of 1887 and by the succeeding biennial session of the legislature of the State, as already appears by the quotation hereinbefore made of section 14 of the Act of 1887, that the capital stock in the hands of the corporation should be taxed if by charter provisions the shares of stock were not subject to taxation. Wherefore complainant desires that both the corporation and the shareholders may be brought before the court in one proceeding, and that it may then be determined whether the tax is validly levied on the shares of stock in the hands of the stockholders or on the capital stock in the hands of the corporation. Complainants do not concede, but, on the contrary, deny, that the aforesaid assessment of the shares of stock for the years 1889 and 1890 are void and invalid, and when the names of the stockholders have been brought before the court the amount of tax due from each of them under said assessment will be shown and judgment prayed for against them.

VI. Complainants have been informed that since the adoption by the State of Tenn. of the constitution of 1870 the defendant banking company has increased its capital stock. It is advised in that event the new stock is taxable. It asks that the defendant, S. P. Read, may, on his oath, state in his answer whether or not the capital stock of the defendant banking company has been increased, and, if so, to what extent, since the adoption of the constitution of the State of 1870, to wit: since the 4th day of May, 1870, and that he may further on oath state the date or dates of such increase of stock, if it has been increased more than once since the date last aforesaid, and that from the books of said company he may furnish a list of the persons, firms, or corporations owning shares of stock on the 10th day of January of each year since and including the year 1887, that has been issued since the adoption of the constitution of the State, on the 4th day of May, 1870. This discovery on oath is asked to the end that the said shares of stock may be assessed so far as the same has not already been legally done, and that the owners thereof may — appropriate amends and supplemental pleadings be brought before the court in this cause for the purpose of enforcing and collecting the tax dues therefrom.

VII. By an act of the legislature passed March 19, 1889, and ap-

proved March 23, 1889, the same being chapter 104 of the
14 Acts of 1889, a privilege tax on banking within and for the city of Memphis (then the taxing district of Shelby county) was levied in terms following, to wit: "On the privilege of banking, $1 on every $1,000 of paid-in capital stock, but in no case less than $50 annually."

Complainants state that the amount of capital of the defendant banking company since and during the year 1889 has been $600,000, and that under the enactment aforesaid the said defendant banking company is indebted to the State of Tenn., for the use of the city of Memphis, or to the city of Memphis directly in the sum of $600 annually, payable at the dates of the passage of the act last aforesaid for the year 1889, and on the first day of Jan'y for the years 1890 and 1891.

Premises considered, complainants pray that the parties named as such in the caption be made defendants hereto; that copy and subpœna issue, returnable to the next December rule day of the court; that the defendant corporation answer under its corporate seal; that the other defendants answer under oath the specific matters as asked in the body of the bill; that the court may determine whether the corporation or the shareholders therein have any immunity from taxation under the charter of said company; that complainants may have a decree against the defendant corporation for such taxes, with proper interest, as may be legally due from it, and may have such further and general relief as in equity they ought to have upon the facts stated.

F. T. EDMONSON,
METCALF & WALKER,
Sol's for Complainants.

Cost Bond.

We, the City of Memphis, as principal, and —— ——, as surety, acknowledge ourselves indebted to Union & Planters' Bank & *al.* in the sum of two hundred and fifty dollars; to be void if the said City of Memphis, complainant in a bill which has this day been filed in the chancery court of Shelby county against the said Union & Planters' Bank & *al.*, shall pay all such costs as may be awarded against it by the court in its decrees and orders in said cause.

This 22d day of October, A. D. 1891.

S. P. WALKER.
F. T. EDMONDSON.
C. W. METCALF.

15 *Demurrer of Defendants.*

Filed Nov. 6, 1891.

In Chancery Court of Shelby County, Tennessee.

STATE OF TENNESSEE, Use, &c.,
vs.
UNION & PLANTERS' BANK & S. P. READ, Cashier. } 8087, R. D.

Defendants demur to the bill filed against them on 22d Oct., 1891, as entered above on the rule docket. The ground of this demurrer is that the object sought by this bill is to enforce the payment of taxes by said bank in excess of the sum of an annual tax of one-half of one per cent. on each share of stock subscribed, which is the tax by the terms of the charter contract between said bank and the State of Tenn., which shall be in lieu of all other taxes. Defendant says said bank is not liable for nor bound to pay the taxes demanded and sought to be collected, and that defendant Read, sued as the cashier, cannot be required to answer said bill nor make the discovery sought from bill in and of the effort to collect such taxes.

CRAFT & CRAFT,
Sol's for Defendant.

Final Decree.

Entered M'ch 28th, 1892.

STATE OF TENNESSEE, &c.,
vs.
UNION & PLANTERS' BANK ET AL.

This cause came on to be heard upon bill of complaint and demurrer of defendant, before his honor J. S Galloway, judge of probate court of Shelby county, sitting in this court by interchange with Hon. W. D. Beard, who, having been of counsel in said case, was therefore incompetent to hear the same. Upon argument had by counsel the court orders, adjudges, and decrees that said demurrer is well taken upon all points therein set out, and the same is
16 sustained and the bill of complaint dismissed with costs, for which execution may issue against it and S. P. Walker, C. W. Metcalf and F. T. Edmondson, sureties on cost bond, from which the complainant prays an appeal to next term of supreme court, to be held at Jackson, Tenn., on 1st Monday in April next, which appeal is granted upon complainants giving bond security for cost as the law directs.

Appeal Bond.

We, the State of Tenn., for use of City of Memphis, and surety, J. J. Williams, acknowledge ourselves indebted to the Union & Planters' Bank *et al.* in the sum of two hundred and fifty dollars; to

be void of the State of Tenn., for use, &c., who has prayed for and obtained an appeal from the decree of the chancery court of Shelby county, in a cause in which The State of Tenn., for use of City of Memphis, is complainant and The Union & Planters' Bank *et al.*, defendants, to the next term of the supreme court of Tenn., for the district of West Tenn., to be held at Jackson, Madison county, on the first Monday of April next, shall pay all such costs as shall be awarded it by said supreme court.

This 1st day of April, 1892.

STATE OF TENN., [SEAL.]
By METCALF & WALKER, *Att'ys.*
J. J. WILLIAMS. [SEAL.]

STATE OF TENN., }
Shelby Co. }

I, E. B. McHenry, clerk and master of the chancery court of Shelby county, do hereby certify that the foregoing 24 pages contain a full, true, and perfect transcript of all the proceedings had in a certain cause wherein The State of Tenn., for use, &c., complainant, and Union & Planters' Bank *et al.* defendant-, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and fixed the seal of said court, at office, in Memphis, this the 31st day of March, A. D. 1892.

[SEAL.]

E. B. McHENRY, *C. & M.*,
By T. B. CALDWELL, *D. C. & M.*

THE STATE OF TENNESSEE:

I, John W. Buford, clerk of the supreme court of said State for the western division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect, and complete copy of the transcript
17 pronounced by said court at its April term, 1892, in the case of State of Tenn., use, &c., against Union & Planters' Bank *et al.*, as appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office, in the city of Jackson, on this the 24th day of March, A. D. 1893, and of the Independence of the United States the 117th year.

[L. S.]

JOHN W. BUFORD, *Clerk*,
By W. H. TIDWELL, *D. C.*

THE STATE OF TENNESSEE:

Pleas before the Supreme Court of said State for the Western Division Thereof at the April Term, A. D. 1892.

Present: The Hon. W. C. Caldwell, acting chief justice, and D. L. Snodgrass, H. H. Lurton, L. Lehman, and B. J. Lea, associate judges, when the following proceedings were had, to wit:

JUNE 7TH, 1892.

STATE OF TENNESSEE, Use, &c., vs. UNION & PLANTERS' BANK. } No. 50, Shelby C. D.

This cause was heard upon the transcript of the record from the chancery court of Shelby county, and it appearing to the court that in the decree below is no error, it is therefore considered by the court that the decree be affirmed, complainant's bill dismissed, and the City of Memphis and S. P. Walker and C. W. Metcalf and F. T. Edmondson, sureties on cost bond, pay the costs of the court below, and they and J. J. Williams, surety on appeal bond, pay the cost of the appeal, for which let execution issue. The court adjudicates none of the points raised by the demurrer of the defendants except those covered by and embraced in the opinion filed, being of opinion that such other points are immaterial after the ruling made in said opinion.

THE STATE OF TENNESSEE:

I, John W. Buford, clerk of the supreme court of said State for the western division thereof, at Jackson, do hereby certify
18 that the foregoing is a true, perfect and complete copy of the decree pronounced by said court at its April term, 1892, in the case of State of Tenn., use, &c., against Union & Planters' Bank *et al.* as appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office, in the city of Jackson, on this the 24th day of March, A. D. 1893, and of the Independence of the United States the 117 year.

JNO. W. BUFORD, *Clerk*,
By W. H. TIDWELL, *D. C.*

Filed April 3, 1899.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee. }

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its November term, A. D. 1898, at the United States court-house in the city of Memphis, in said district, on, to wit: the 3d day of April, A. D. 1899, in the following cause, to wit:

UNION & PLANTERS' BANK, Plaintiff, vs. THE CITY OF MEMPHIS ET AL., Defendants. } No. 532.

This day comes complainant, by its solicitors, and files in this court here its bill in this cause and gives the usual bond for costs, and it is ordered that the usual summons issue to next rules.

No. 532. Circuit court of the United States, western district of Tennessee. Union & Planters' Bank *vs.* City of Memphis *et al.* Order of court. Entered and filed 3 day of April, A. D. 1899. John B. Clough, clerk.

The President of the United States of America to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to summons the City of Memphis, a municipal corporation by the laws of the State of Tennessee,
19 and John H. Alsup, trustee of the county of Shelby, in the State of Tennessee, citizens of the State of Tennessee, if to be found within your district, to appear before the circuit court of the United States in the sixth circuit for the western district of Tennessee, at Memphis, in said district, on the first Monday in May next, and then and there to plead, answer or demur to the bill filed in the office of the clerk of said court on the third day of April, A. D. 1899, against said defendants by the Union & Planters' bank, a banking corporation having its situs at Memphis aforesaid, operating under a special charter granted by the State of Tennessee, and who is a citizen of the State of Tennessee. Herein fail not, and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court at Memphis, this third day of April, A. D. 1899, and the 123d year of American Independence.

[L. S.] JOHN B. CLOUGH, *Clerk.*

Memorandum.

The said defendants are required to enter appearance in this suit in the office of the clerk of the circuit court at Memphis, Tennessee, on or before the day on which the subpœna is returnable, or the allegations of the bill herein will be taken for confessed against said defendant and judgment rendered accordingly..

JOHN B. CLOUGH, *Clerk.*

Marshal's Return.

This writ came to hand on the date of its issuance, and I duly executed the same, as herein commanded, by making the contents thereof known to the within-named defendant, J. J. Williams, mayor of the city of Memphis, at Memphis, Tennessee, on the 7th day of April, A. D. 1899, and at the same time and place delivering to him a duly certified copy thereof together with such copy of the bill in this cause; and I further executed this writ by making known the contents thereof to the defendant, John H. Alsup, at Memphis, Tennessee, on the 7th day of April, A. D. 1899, and also then and there delivering to him like copy of the same, and of said bill; and I further executed this writ by making known the contents thereof to the defendant, —— ——, at ——, Tennessee, on the

— day of —— A. D. 189–, and also then and there delivering to him like copy of the same, and of the said bill.

Memphis, Tennessee, —— A. D. 189–.

T. H. BAKER,
U. S. Marshal,
By R. H. McNEELY, *Deputy.*

20 No. 532. Circuit court of the United States, western district of Tennessee. Union & Planters' Bank *vs.* City of Memphis, John H. Alsup, trustee. Summons. Issued 3 day of April, 1899. J. B. Clough, clerk. Returnable April A. D. 1899. Carroll & McKellar, Cooper & Waddell, attorneys.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its November term, A. D. 1898, at the United States court-house in the city of Memphis, in said district, on to wit, the 18 day of May, A. D. 1899, in the following cause, to wit:

UNION & PLANTERS' BANK, Plaintiff,
vs.
CITY OF MEMPHIS ET AL., Defendant. } No. 532.

For satisfactory reasons to the court appearing it is hereby ordered by the court that the above cause in equity and all motions pending therein, be and the same are hereby continued to the next term of this court.

No. 532. Circuit court of the United States, western district of Tennessee. Union & Planters' Bank *vs.* City of Memphis *et al.* Order of court. Entered and filed 18 day of May, A. D. 1899. John B. Clough, clerk.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1899, at the United States
21 court-house in the city of Memphis, in said district, on to wit, the 10 day of July, A. D. 1899, in the following cause, to wit:

UNION & PLANTERS' BANK, Plaintiff,
vs.
CITY OF MEMPHIS ET AL., Defendant. } No. 532.

This cause coming on this day to be heard before the Hon. E. S. Hammond, judge, upon motion of defendant- to dismiss the bill of complaint herein, for want of jurisdiction, which motion having been argued by counsel and considered by the court, it is ordered, adjudged and decreed by the court that said motion be overruled and defendants given five days in which further to plead.

No. 532. Circuit court of the United States, western district of Tennessee. Union & Planters' Bank *vs.* City of Memphis, *et al.* Order of court. Entered and filed 10 day of July, A. D. 1899. John B. Clough, clerk.

Circuit Court of the United States, Western District of Tennessee.

UNION & PLANTERS' BANK
vs.
CITY OF MEMPHIS and JOHN H. ALSUP, Trustee. } No. 532.

Demurrer. Filed Aug. 7, 1899.

Joint and Several Demurrer of the City of Memphis and John H. Alsup, Trustee.

The City of Memphis and John H. Alsup, trustee of Shelby county, jointly and severally demur to the bill of complaint filed against them herein, and for grounds of their demurrer they say:

First. There is no diversity of citizenship and no Federal question involved herein, and this court is without jurisdiction.

Second. The complainant has an adequate remedy at law; hence this court has no jurisdiction.

Third. The complainant, if it is entitled to any redress at all has a plain and adequate remedy by paying under protest the tax demanded, and suing to recover back.

22 Fourth. The former adjudication set up in the bill must be limited to the taxes actually in litigation and the judgment relied on is not conclusive in respect of taxes assessed for other and subsequent years.

Fifth. Since the adjudication relied upon as a bar, the Supreme Court of the United States and the supreme court of Tennessee have expressly held and it is now the law that the complainant is not entitled to any exemption from taxation upon its capital stock, that the charter tax and charter exemption were upon and of the shares of stock and not the capital stock, and hence the right of the city to tax the complainant's capital stock is no longer an open Federal question, nor an open question of any sort.

Sixth. So much of the bill as relies upon a former adjudication of the question involved by the courts of Tennessee raises no Federal question, and as to this part of the bill the Federal court has no jurisdiction.

Seventh. By the injection into the bill of a Federal question, repeatedly decided in the courts of last resort against the bank's contention, the bill does not confer upon the Federal court jurisdiction of the purely local question of *res adjudicata*.

Eighth. The Federal court may assume jurisdiction so far as the bill relies upon an impairment of the obligation of a contract as an original question, but the Federal court should decline to exercise jurisdiction of the question of the weight and effect to be given to a former judgment of the State court.

Ninth. The capital stock of the complainant is by law subject to taxation by the city of Memphis.

Tenth. In the suit in which the judgment is relied on as a bar the parties were not the same, the statutes under consideration were not the same, the questions of law and fact were not the same, and the subject-matter was not the same, as appear from the bill to be involved herein.

Eleventh. There is no equity on the face of the bill.

Wherefore the defendants pray that the bill be dismissed and that they go hence with their costs in this behalf; and will ever pray, &c.

JOHN H. WATKINS,
Solicitor for Defendants.

SHELBY COUNTY, }
Tennessee. }

John H. Alsup, makes solemn oath and says that he is one of the above-named defendants and that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

JNO. H. ALSUP.

23 Subscribed and sworn to before me this 7th day of August, 1899.

[SEAL.] JAMES BRETT, JR.,
Notary Public.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JNO. H. WATKINS,
Counsel for Defendants.

UNITED STATES OF AMERICA, }
Western Division of the Western District of Tennessee. }

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1899, at the United States courthouse in the city of Memphis, in said district, on to wit, the 25 day of November, A. D. 1899, in the following cause, to wit:

UNION & PLANTERS' BANK, Plaintiff,
vs.
CITY OF MEMPHIS ET AL., Defendant. } No. 532.

For satisfactory reasons to the court appearing it is hereby ordered by the court that the above-entitled cause be and it is hereby continued to the next term of this court.

No. 532. Circuit court of the United States, western district of Tennessee. U. & P. Bank *vs.* City of Memphis. Order of court. Entered and filed 25 day of Nov., A. D. 1899. John B. Clough, clerk.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its November term, A. D. 1899, at the United
24 States court-house in the city of Memphis, in said district, on to wit, the 24 day of May, A. D. 1900, in the following cause, to wit:

THE UNION & PLANTERS' BANK, Plaintiff,
vs.
THE CITY OF MEMPHIS ET AL., Defendant. } No. 532.

For satisfactory reasons to the court appearing it is hereby ordered by the court that the above cause be and it is hereby continued to the next May term of this court.

No. 532. Circuit court of the United States, western district of Tennessee. Union & Planters' Bank *vs.* City of Memphis. Order of court. Entered and filed 24 day of May, A. D., 1900. John B. Clough, clerk.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1900, at the United States court-house in the city of Memphis, in said district, on to wit, the 5 day of November, A. D. 1900, in the following cause, to wit:

THE UNION & PLANTERS' BANK, Plaintiff,
vs.
THE CITY OF MEMPHIS ET AL., Defendant. } No. 532.

This cause came on to be heard upon the application of the complainant to file a supplement to its original bill herein, and the court being advised in the premises, is pleased to order, adjudge and decree that leave be granted, and accordingly the said bill is amended by adding before its prayer in the words and figures following:

"And now by way of supplement and amendment to the bill herein, by leave of the court first had and obtained, your orator avers that by an act of the General Assembly of the State of Tennessee, passed on the 21st of April, 1899, and approved on the 24th of April, of the same year, being chapter 435 of the Session Acts of that year, and particularly by the 26th section of said act, and for the express purpose of imposing a tax on its capital stock," the General Assembly of the State of Tennessee, provided as follows: "Be it further enacted, That this act shall not be so construed, and shall not so operate as to exonerate and release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation; but it is hereby enacted that in all cases where such stock is exempted, such company or corporation shall be assessed in such way as may be lawful; and in all cases in which, by the terms or legal effect of the charter, the shares of stock in any corporation are wholly or partially exempt from taxation, or in which a rate of taxation on the shares of the stock is fixed and prescribed, and declared to be in lieu of all other taxes for State, county and municipal purposes, shall be assessed and levied at a rate uniform with the rate levied upon other taxable property, upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate, and not less than the actual cash value of all the shares of stock in said corporation, including the net surplus. Provided, however, that where the State has provided in the charter of any such corporation or company that it shall pay a stated per cent. on each share of stock subscribed annually to the State, which shall be in lieu of all other taxes, it shall be entitled to a credit therefor upon its assessment of its capital stock, as hereinbefore provided."

And by the 76th section of the said act, it further enacted, among other things, as follows: "Be it further enacted, That in all instances in which current municipal taxes are collected by the county trustee, the following provisions and rules for the collection of delinquent taxes that may be due to said municipalities, and none other, shall prevail and obtain, anything in this act to the contrary notwithstanding.

(1.) The taxes levied and assessed by such municipalities shall become due and delinquent on the dates as now provided by existing laws.

(2.) If such municipal taxes be not paid on or before the date fixed for the delinquency thereof, then a penalty of five

per cent. thereon shall at once accrue. If the same be not paid on or before the first day of the following month, then an additional penalty of two per cent. thereon shall accrue, and an additional penalty of one per cent. shall accrue on the first day of each month thereafter that the same shall remain unpaid until such penalty shall reach the sum of ten per cent. on the original tax, whereupon the said penalty shall be no further increased.

(3.) The accrual of the penalty aforesaid shall in no respect affect the interest to be paid on said taxes from the date they become delinquent, such interest to be paid as if no penalty had been imposed."

And by the 81st section of said act it was enacted as follows: "Be it further enacted, That any officer whose duty it is to collect county or municipal revenue on property, or privileges, shall have the power, and it is hereby made his duty, where he cannot collect such taxes by the ordinary method of distress and sale, to bring any and all suits necessary to be brought, or to intervene in any cause where the property or its proceeds, is liable for the tax, is in the hands of a receiver appointed by either the State or Federal court to obtain payment of the taxes from the property or its proceeds; and such officer is authorized to employ the necessary counsel to conduct suits and proceedings under this section, and in all suits or proceedings, ten per cent. shall be added to the recovery as counsel fees, in addition to the recovery. This section shall apply to any taxes now due and unpaid, as well as to any that may hereafter become due. A substantial compliance with the provisions of this act shall be sufficient to fix a lien for taxes, and no more irregularities in the assessment of property or polls, or a failure of any official herein named, or of any tax-payer to follow in strict detail the provisions of this act, shall invalidate the assessment of property or polls." And the complainant says that under the act last aforesaid the capital stock has been assessed for taxation for the year 1899, and upon which the defendants will, unless restrained by a writ issuing out of this court, subject it to other suits to collect municipal taxes for the year 1900, the effect of said assessment for the year 1899 being a cloud upon its title to its franchises and properties, and this notwithstanding that it is contractually exempt from the payment of ad valorem taxes upon its capital stock to the said city of Memphis, by the judgment and decree of the supreme court of the State of Tennessee, which finally and conclu-
27 sively determined that the charter tax of one-half of one per cent. is in lieu of all other taxes against said bank on its capital stock, or against the owners of shares of stock. And your orator avers that all of said assessments are illegal, as has been adjudged heretofore, in the aforementioned cause, by the said supreme court of Tennessee, and in the suit aforesaid, which was a controversy between it and the said city of Memphis involving the direct question, upon identically the same facts as hereinbefore set forth, and impair the obligation of its contracts judicially construed, and violation of the contract clause of the Constitution of the United States, and that unless restrained by this honorable court, the defendant, The City of Memphis, and J. H. Alsup, *ex officio* collector of

municipal taxes in said city of Memphis, will attempt to levy and collect taxes based upon the aforesaid illegal assessments, and will subject your orator to a multiplicity of suits in order to do so, and impose penalties as well and cast clouds upon its title to its franchises and property, as has — hereinbefore set forth. And the court is pleased to order that the said supplement be considered as incorporated in the original bill just before the prayer thereof, and that the prayer be answered by the insertion of the letters after the word "assessment" wherever it appears in said prayer.

Circuit Court of the United States, Western District of Tennessee.

UNION & PLANTERS' BANK vs. CITY OF MEMPHIS and JOHN H. ALSUP, Trustee. } No. 532. In Equity. Demurrer.

Filed Sept. 8, 1900.

Joint and Several Demurrer of the City of Memphis and John H. Alsup, Trustee.

The City of Memphis, and John H. Alsup, trustee, of Shelby county, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint, and its amended and supplemental bill of complaint contained, to be true, in such manner and form as the same is therein set forth and alleged, do jointly and severally demur to said original bill; also to said amended and supplemental bill, and for cause of demurrer show:

28 First. There is no diversity of citizenship, and no Federal question involved herein, and this court is without jurisdiction.

Second. The complainant has an adequate remedy at law; hence this court of equity has no jurisdiction.

Third. The complainant, if it is entitled to any redress at all, has a plain and adequate remedy by paying under protest the tax demanded, and suing to recover back.

Fourth. The former adjudication set up in the bills must be limited to the taxes actually in litigation, and the judgment relied on is not conclusive in respect of taxes assessed for other and subsequent years.

Fifth. The judgment set up as a bar was a judgment of a Tennessee State court adjudicating the liability of the bank for the taxes of certain years other than the years involved in this suit. In Tennessee a judgment in a tax case is not *res adjudicata* as to the taxes of any years except those actually in controversy. This court cannot give to or import into the judgment of the State court another or different effect than that possessed by the judgment under the laws of the State pronouncing the judgment. Hence the adjudication set up in the bills cannot be relied upon as bar to the recovery of the taxes involved in this suit.

Sixth. Since the adjudication relied upon as a bar, the Supreme

Court of the United States have expressly held, and it is now the law, that the complainant is not entitled to any exemption from taxation upon its capital stock, and that the charter tax and charter exemption were upon and of the shares of stock, and not the capital stock, and hence the right of the city to tax the complainants' capital stock is no longer an open Federal question, nor an open question of any sort.

Seventh. So much of the bills as relies upon a former adjudication of the questions involved by the courts of Tennessee raises no Federal question, and as to this part of the bill the Federal court has no jurisdiction.

Eighth. By the injection into the bills of a Federal question repeatedly decided in the courts of last resort against the bank's contention, the bills do not confer upon the Federal court jurisdiction of the purely local question of *res adjudicata*.

Ninth. The Federal court may assume jurisdiction so far as the bills rely upon an impairment of the obligation of a contract as an original question, but the Federal court should decline to exercise jurisdiction of the question of the weight and effect to be given to a former judgment of the State court.

29 Tenth. The capital stock of the complainant is by law subject to taxation by the city of Memphis.

Eleventh. In the suit in which the judgment is relied upon as a bar, the parties were not the same, the statutes under consideration were not the same, the questions of law and fact were not the same, and the subject-matter was not the same, as appear from the bills to be involved herein.

Twelfth. There is no equity on the face of the bills.

Wherefore, and for divers other good causes of demurrer appearing in said original and amended and supplemental bills, the defendants jointly and severally demur thereto, and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said bills, and pray to be hence dismissed with their costs and charges in this behalf most wrongfuly sustained.

JNO. H. WATKINS,
Solicitor for Defendants.

John H. Alsup makes oath that he is one of the above-named defendants; that the foregoing demurrer is not interposed for delay, and that same is true in point of fact.

JNO. H. ALSUP.

Subscribed and sworn to before me, this 8th day of September, 1900.

[L. S.]

J. C. ADAMS,
Notary Public.

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

JNO. H. WATKINS,
Of Counsel for Defendants.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May-November term, A. D. 1900, at the
30 United States court-house in the city of Memphis, in said district, on to wit, the 6th day of November, A. D. 1900, in the following cause, to wit:

THE UNION & PLANTERS' BANK, Plaintiff,
vs.
THE CITY OF MEMPHIS, Defendant. } No. 532.

This cause came on to be heard before the Hon. E. S. Hammond, upon the application of complainant for a restraining order, and upon the demurrer of the defendants to the amended and supplemental bill of complaint. And the court being advised in the premises, is pleased to deny the application of the complainant, and is also pleased to adjudge and decree that the demurrer of the defendants to the original and the amended and supplemental bills be sustained. Wherefore, it is ordered by the court that the bill of complaint and also the amended and supplemental bill herein be dismissed at the cost of the complainant, for which execution may issue against it and William H. Carroll, the surety upon its cost bond.

And from the above decree the complainant prays an appeal to the circuit court of appeals at Cincinnati, at its next term, which is granted upon execution of a bond conditioned according to the Revised Statutes of the United States in such case as made and provided. And John H. Watkins, solicitor for the defendant, in open court appearing, waives the service of any citation upon the defendants of the appeal herein prayed.

In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

UNION & PLANTERS' BANK
vs.
THE CITY OF MEMPHIS.

The appellant, The Union & Planters' Bank, assigns error to the decree of the court below, sustaining demurrers to the original, amended and supplemental bills, because the appellant says it appears by the record herein that it was a banking corporation under a special act of the General Assembly of the State of Ten-
31 nessee, and that in a suit instituted in the chancery court of Shelby county, Tennessee, to recover of it ad valorem taxes on its capital stock by the said City of Memphis, alleged to be due

to it, the said City of Memphis, under the 14th section of the general revenue laws of the State, passed in 1887, for the years from 1888 to 1890, inclusive, an issue was joined between the said City of Memphis and the appellant, and the identical question determined was in a suit mentioned and described in the bill of complaint, that by reason of the exemption contained in its charter, the appellant was contractually exempt from paying the said City of Memphis ad valorem taxes on its capital stock, and the record showing and setting forth the aforesaid judgment and decree, the same having been passed and entered by the supreme court of the State of Tennessee, and setting forth the conclusiveness thereof as against the ad valorem taxes claimed by the said City of Memphis for the years 1899 and 1900, under the 16th section of chapter 1 of the Acts of 1897, and the 26th section of chapter 435 of the Acts of 1899, upon assessments made thereunder, of the capital stock of the appellant, and that the aforesaid assessments and the revenue laws under which they were made, cast clouds upon appellant's title to its franchises, and the enforcement thereof was being attempted by the county trustee and the appellant about to be subjected to a multiplicity of suits, and to the imposition of penalties, it was error in the court to have dismissed the bill and not to have held:

I.

That the capital stock of the appellant was, by virtue of its charter, and the adjudications of the supreme court of the State of Tennessee, contractually exempt from the payment of the municipal taxes mentioned in the bill of complaint.

II.

It was error in the court in not sustaining the plea of *res adjudicata* and overruling the demurrers, and in not holding that the appellant was contractually exempt from the payment of municipal taxes upon its capital stock, and that the fact of that exemption was conclusively determined by the presumption of the thing adjudged arising upon the decree of the supreme court of the State of Tennessee in the suit between this appellant and the said City of Memphis, upon the precise facts involved, and where a similar revenue law was attempted to be enforced, and to have further held that the attempt to
32 enforce the assessments and taxes set forth in the bill of complaint would impair the obligation of the contract between the appellant and the State of Tennessee.

III.

It was error for the circuit court not to have held that the revenue laws of 1897 and 1899 were inoperative and inefficacious to impose a tax upon the appellant's capital stock, and the proceedings thereunder were illegal, because the exemption clause of the appellant's charter had previously received the judicial construction, in a suit between the said City of Memphis and the appellant, where the said city was attempting to enforce the collection of the tax under a law in all respects similar to the provisions of the revenue laws afore-

said, and the supreme court of the State of Tennessee having decided that the said tax was illegal by reason of the contract of exemption in appellant's charter, the question therefore of its liability for a like tax in subsequent years, was *res adjudicata*.

CANALL & McKELLAR AND
COOPER & WADDELL,
Sol's for Complainant.

Filed Nov. 5, 1900.

In the Circuit Court of the United States, Western District of Tennessee, Western Division.

THE UNION & PLANTERS' BANK OF Memphis
vs.
CITY OF MEMPHIS.
} No. 532. Supersedeas Bond.

Know all men by these presents, that we, Union & Planters' Bank of Memphis, Tennessee, as principal, and S. P. Read and W. H. Carroll, as sureties, are hereby held and firmly bound unto said City of Memphis in the full and just sum of five hundred dollars, lawful money of the United States, to be paid to the said City of Memphis, for the payment of which, well and truly to be made, we hereby bind ourselves jointly and severally, and our joint and several heirs, executors and administrators, by these presents.

Signed by us, sealed with our seals, and dated at Memphis, Tennessee, this 17 day of September, A. D. 1900.

33 Whereas, the above-named principal has prosecuted a writ of error to the United States circuit court of appeals for the sixth judicial circuit, holden at Cincinnati, in the State of Ohio, to reverse the judgment rendered in the above-entitled suit against said principal by the circuit court of the United States for the western division of the western district of Tennessee.

Now, therefore, the condition of the foregoing obligation is such that if the above-named principal shall prosecute his said writ of error to effect, and answer all costs and damages if he fail to make his plea and the said writ of error good, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

[SEAL.] UNION & PLANTERS' BANK OF MEMPHIS, [SEAL.]
By S. P. READ, *R. S.* [SEAL.]
S. P. READ. [SEAL.]
WM. H. CARROLL.

Signed, sealed, delivered, taken and acknowledged before me at Memphis, Tennessee, this 5 day of November, A. D. 1900.

JOHN B. CLOUGH,
Clerk of said U. S. Circuit Court,
By W. B. WEISIGER, *D. C.*

Approved at Memphis, Tennessee, on the day of date of the said bond.

E. S. HAMMOND,
United States District Judge.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } ss:

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Union & Planters' Bank of Memphis, Tennessee, and the City of Memphis a manifest error hath happened, to the great damage of the said Union & Planters' Bank, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done
34 to the parties aforesaid in this behalf, do command you, if the judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the sixth circuit, together with this writ, so that you have the same at Cincinnati, in said circuit, on the 5th day of December next, in the said circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court, the 5th day of November, A. D. 1900, and of the Independence of the United States of America the 125th year.

JOHN B. CLOUGH,
Clerk of the Circuit Court of the United States for the Western District of Tennessee.
By W. M. WEISIGER, *D. C.*

Allowed by

E. S. HAMMOND,
United States District Judge.

In the United States Circuit Court of Appeals for the Sixth Judicial Circuit, Cincinnati, Ohio.

UNION & PLANTERS' BANK
vs.
CITY OF MEMPHIS. } No. —. Citation.

To the City of Memphis, Greeting:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the sixth judicial circuit, at a session of said court to be held in the city of Cincinnati, in the State of Ohio, in said circuit, on the 5th day of December, A. D. 1900, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States for the western division of the western district of Tennessee, wherein Union & Planters' Bank of Memphis, Tennessee, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the
35 judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 5 day of November, A. D. 1900, and of the Independence of the United States the 125th year.

E. S. HAMMOND, [SEAL.]
U. S. District Judge for the Western District of Tennessee.

Service acknowledged.

JNO. H. WATKINS,
Att'y for City of Memphis.

Sept. 17, 1900.

THE UNITED STATES OF AMERICA,
Sixth Judicial Circuit, Western District of Tennessee. }

I, John B. Clough, clerk of the circuit court of the United States, for the western division of the western district of Tennessee, do hereby certify that the paper hereto attached is a full, true, perfect and correct copy of the original record and proceedings in said court as the same now appears of record and upon the files in my office in the following cause, to wit:

THE UNION & PLANTERS' BANK
vs.
THE CITY OF MEMPHIS and JNO. H. ALSUP, as Trustee of Shelby Co., Tennessee. } No. 532.

In testimony whereof, I have hereunto written my name and affixed the seal of said court, at my office in the city of Memphis, Tennessee, this 22d day of November, A. D. 1900, and of the Independence of the United States the 124th year.

[SEAL.] JOHN B. CLOUGH, *Clerk.*

Authentication.

I, E. S. Hammond, a judge of said court, do hereby certify that John B. Clough, whose genuine signature appears to the fore-
36 going certificate is, and was at the date of the same, clerk of said court, and that his attestation is in due form.

E. S. HAMMOND,
Judge of the District Courts of the United States for the District Aforesaid.

No. 532 eq. Circuit court of the United States, western district of Tennessee. Union & Planters' Bank *vs.* City of Memphis *et al.*

37 And afterwards to wit on November 27th 1800 præcipe for appearance of counsel was filed which is in the words and figures as follows:

38 United States Circuit Court of Appeals for the Sixth Circuit, October Term, 1900.

UNION & PLANTERS' BANK
vs.
CITY OF MEMPHIS. } No. 924.

To the clerk of said court:

Please enter *my* appearance as counsel for the plaintiff in error.

WM. H. CARROLL.
KENNETH D. McKELLAR.

☞ NOTE.—Must be signed by a member of the bar of Supreme Court of the United States or of any circuit court of the United States, and by individual (not firm) name.

39 And afterwards to wit on June 10th 1901, an entry was made upon the journal of said court which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

UNION & PLANTERS' BANK OF MEMPHIS
vs.
CITY OF MEMPHIS.

Lurton, Day & Severens, JJ.

This cause is argued for appellants by Messrs. Wm. H. Carroll and Timothy E. Cooper and for appellee by Mr. John H. Watkins and is submitted.

And afterwards to wit on October 21st 1901, a decree was entered in said cause clothed in the words and figures as follows:

Decree.

40 United States Circuit Court of Appeals for the Sixth Circuit.

UNION & PLANTERS' BANK OF MEMPHIS
vs.
CITY OF MEMPHIS. } No. 924.

Appeal from the circuit court of the United States for the Western district of Tennessee.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the western district of Tennessee, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause be and the same is hereby affirmed with costs.

41 And afterwards to wit on October 28th 1901 an opinion was rendered in said cause which is in the words and figures as follows:

Opinion.

42 United States Circuit Court of Appeals, Sixth Circuit.

THE UNION AND PLANTERS' BANK OF Memphis, Appellant,
vs.
THE CITY OF MEMPHIS, Appellee. } No. 924. Appeal from the Circuit Court of the United States for the Western District of Tennessee.

Submitted June 10, 1901. Decided Oct. 21, 1901.

Before Lurton, Day, and Severens, circuit judges.

The case is this: In 1859 the State of Tennessee, by its General Assembly, granted a charter under which the Union and Planters' bank was organized. That charter contained a provision upon the subject of taxation in these words: "That said company shall pay to the State of Tennessee an annual tax of one-half of one per cent. on each share of stock subscribed, which shall be in lieu of all other taxes."

The complainant's bill avers that in impairment of the obligation of this contractual exemption from every tax except that provided by the charter, the State of Tennessee has passed a law providing, among other things, for the assessment of State, county and city taxes upon the capital stock of this and all other corporations having like contractual exemptions, and that the city of Memphis under and in pursuance of the legislation referred to has assessed an ad valorem tax for the year 1899 upon the capital stock of the complainant bank for municipal purposes exceeding $2,000.00, and is about to distrain, etc.

It is averred that the law under which this assessment has been made impairs the obligation of the contract by which complainant is exempt from all taxation upon its capital stock other than
43 that provided for in its charter. It is then averred that in a former litigation between this complainant and the city of Memphis where it was sought to enforce a municipal assessment of taxes upon complainant's capital stock for the years 1888, 1889 and 1890, it was solemnly adjudged and decided that under the charter provision aforesaid the capital stock of said corporation was exempt from all general taxation. The record in the said suit and the judgment therein rendered, being a judgment of the supreme court of Tennessee, is set out in full and plead and relied upon as an adjudication estopping the said city of Memphis from bringing the validity or the true and proper construction and meaning of said provision again into controversy. The bill is most specific in averring that the judgment so plead and set out as establishing the exemption of its said capital stock from taxation was based upon the identical claim of exemption now asserted by it in order to defeat the taxes now in question, and that "the judgment and decree aforesaid adjudged its claim to exemption upon the identical same facts and conditions" as those appearing herein.

Upon this former judgment between the same parties and upon the same facts and issues the complainant bank avers and contends that the question of the right of the city of Memphis to assess its capital stock "has been finally judicially determined not to exist, because of the judicial construction put upon its exemption in the suit to determine that question between it and the said City of Memphis."

The defendant filed a demurrer assigning no less than twelve reasons why the complainant's bill should not be sustained. This demurrer was sustained and the bill dismissed.

LURTON, circuit judge, having made the foregoing statement of the case, proceeded then to deliver the opinion of the court.

1. The demurrers which go to the jurisdiction of the court are not well founded. The jurisdiction does not depend upon diversity of citizenship, for that does not exist, but upon the Federal question arising out of the alleged violation of the obligation of the contract contained in the charter of the complainant corporation.

The bill attacks the constitutionality of the revenue laws of 1897 and 1899 so far as they authorize the imposition of a tax upon the capital stock of the Union and Planters' bank as a law impairing the obligation of the charter exemption. Bank of Kentucky *v.* Stone, 88 F. R. 383, 390; Stone, auditor, *v.* Farmers' Bank of Kentucky, 174 U. S. 409, 412.

44 2. Neither is the demurrer to the equitable jurisdiction of the court well founded.

The remedy by suit at law to recover a tax paid under protest given by the Tennessee act of 1873, ch. 44, being section 1059 Shannon's Revision of the Tennessee Code, applies only to revenue due the State. City of Nashville *v.* Smith, 2 Pickle, 213.

It has no application where the tax complained of is one assessed by a county or city. In such case the only legal remedy to recover an illegal tax is that furnished by the common law. Railroad *v.* Williams, 101 Tenn. 146.

There must exist some equitable ground for relief besides the mere illegality of the tax. If it appears that the tax constitutes a cloud upon the title of the complainant, or that he will be subjected to irremediable damages, or to a multiplicity of suits, if compelled to rely upon his legal remedy alone, equity will interpose upon the ground of the inadequacy of the remedy at law. Dows *v.* Chicago, 11 Wall. 198; Union Pacific R'y *v.* Cheyenne, 113 U. S. 516, 525; Ogden City *v.* Armstrong, 168 U. S. 224, 238; Bank of Kentucky *v.* Stone, 88 F. R. 383.

The case made by the bill is not the case of an objection to a single or particular assessment. The complainant sets up a claim of complete exemption not only against the particular assessment, but against all future efforts to assess its capital stock. As observed by Chief Justice Marshall in Osborn *v.* Bank, 9 Wheat. 738, 842, "the single act of levying the tax, in the first instance, is the cause of an action at law; but that affords a remedy only for the single act, and is not equal to the remedy in chancery, which prevents its repetition and protects the privilege."

The bill in substance avers that there have been many previous litigations between the complainant and the State of Tennessee, the county of Shelby and the city of Memphis, in which the right to levy taxes upon its capital stock was asserted and the exemption claimed under the charter was denied. Complainant sets out in full one such former litigation with the city of Memphis, resulting in a judgment of the supreme court of the State judicially determining the exemption of its capital stock from any and all taxes other than the charter tax.

Notwithstanding these former litigations the defendant is charged with persisting in a denial of the exemption claimed. Under such circumstances it would appear that the complainant is entitled to the remedy in chancery for the purpose of preventing repetitions of such assessments in the future, and thereby preventing a multiplicity of suits. Bank of Kentucky *v.* Stone, 88 F. R. 383, 392; Morris
45 Canal & Banking Co. *v.* Mayor of Jersey City, 12 N. J. Eq. 227; High on Inj., sec. 530.

3. Is the capital stock of the complainant company contractually exempt from taxation other than the charter tax of one-half of one per cent. on each share of stock subscribed?

Does this exemption apply to the corporate capital in the hands of the corporation, or to the shares of capital stock in the hands of shareholders, or are both species of property equally exempt from any tax other than that payable by the express provision of the charter?

Curiously enough we are not lacking in very high authority upholding each of three possible constructions of the taxing clause of the complainant's charter.

Thus in Memphis *v.* Farrington, 8 Bax. 539, the supreme court of

Tennessee held that language similar and identical in meaning found in the charters of a number of Tennessee banks and insurance companies operated only to exempt the capital stock of such corporation in the hands of the corporation upon the payment of the charter tax stipulated for, but that shares of stock, being a distinct property, were not exempt, but were subject to taxation in the hands of shareholders. This decision was made in 1876, in a case between a stockholder in the complainant bank, as well as in other corporations, in which Farrington stood for and represented the entire class of stockholders, the City of Memphis and the State of Tennessee being the adversary parties. The complainant corporation was not a party to the suit and the real question involved was that of the taxability of shares of stock in the hands of shareholders.

That case was taken, on writ of error, to the Supreme Court of the United States and there reversed, that court holding in an opinion by Justice Swayne, that the exemption granted extended to the shares in the hands of shareholders. Three members of the court dissented, holding that the exemption did not extend to shareholders, and that the judgment of the Tennessee court should be affirmed. The judgment of the Tennessee court was accordingly reversed and the shareholders held to be exempt from any tax other than that stipulated to be paid by the corporation. Farrington *v.* Tennessee, 95 U. S. 679.

In Bank of Commerce *v.* McGowan, 6 Lea. 703, the liability of the Bank of Commerce to be assessed upon its bank building and upon several parcels of realty bought in payment of debt was involved.

The court held that the bank building was exempt under
46 a provision of the charter providing that the bank "shall pay to the State an annual tax of one-half of one per cent. on each share of its capital stock, which shall be in lieu of all other taxes," but that this exemption would not extend to the real estate bought in satisfaction of debt due the bank. This result was reached upon the assumption of the exemption of the capital stock of the bank and upon the authority of the case of the De Soto Bank *v.* Memphis, 6 Bax. 415, where it was held that the bank's power to hold real estate was limited by the charter to the real estate necessary for the conduct of its business and the corporate capital used for the purposes of the corporation, and that the contract ceased to operate when taxable property was held for other purposes. In respect of the opinion of the Supreme Court of the United States in Farrington *v.* Tennessee, 95 U. S. 679, Judge Cooper, speaking for the court, said:

"There is nothing in conflict with this view, as the learned counsel of the complainant seem to think, in the decision of the Supreme Court of the United States in Farrington *v.* Tennessee, 95 U. S. 679. It was there held that the provision in a bank charter, like the one before us, is a contract, and will protect the shares of the stockholders from additional taxation. We recognize the controlling authority of that court in such cases, and yield to its decisions. The provision in question will, therefore, protect the capital stock and

the shares of the stockholders from any taxation beyond that prescribed in the charter."

That case was affirmed upon a writ of error sued out by the bank, the case being reported as the Bank of Commerce *v.* State of Tennessee, 104 U. S. 493. Both of these decisions were made in 1881.

The next opinion in point of time proper to be referred to is that of the City of Memphis against the Union and Planters' Bank, the appellant herein, in which the city sought by a bill in equity to compel the payment of city taxes for the years 1887 to 1891, inclusive, assessed upon the corporate capital of the bank. The bill also sought to compel the payment of a privilege tax for the years 1889, 1890 and 1891 imposed by the city for the right of exercising its franchises of doing a banking business in the city.

The bill averred that the bank claimed an exemption from all taxation upon its capital stock as distinguished from the shares in the hands of stockholders by virtue of the charter contract heretofore set out and claimed that it was neither subject to the ad valorem or privilege tax which had been imposed, and therefore refused to pay. The contention of the city as set out on the
47 face of its bill was that the true and proper interpretation of the charter exemption referred to was to exempt the shares in the hands of shareholders from any tax other than that which the bank was required to pay under its charter, and that the corporation as such was liable to pay taxes upon its capital stock and upon its franchises notwithstanding the terms of the charter.

The court sustained the demurrer of the defendant bank and dismissed the bill, holding that the bank was exempt from both species of tax by reason of its charter exemption.

Touching the former decisions of the court construing and applying the charter exemption involved, Judge Caldwell, speaking for the court, said:

"Since the decision in the Farrington case by the Supreme Court of the United States, this court has uniformly adhered to its previous holding, that no ad valorem tax can lawfully be laid on the capital stock, and, in recognition of that decision, has gone further, and said that shares of stock are likewise exempt from other taxation than that prescribed in the charter." Bank of Commerce *v.* McGowan, 6 Lea, 705; The State *v.* Butler, 13 Lea, 406; The State *v.* Butler, 2 Pickle, 633.

Continuing, the learned judge said:

"Considering the decisions of the Supreme Court of the United States in Farrington *v.* Tennessee, 95 U. S. 679, and in Bank *v.* Tennessee, 104 U. S. 493, together, and giving them the controlling weight to which they are entitled, it cannot be held otherwise than that the charter tax of one-half of one per cent. is in lieu of all other taxes, whether against the bank on its capital stock or against owners on shares of stock. Under the construction there given, the charter exemption includes both.

"As an original question, we would hold as held by this court in Memphis *v.* Farrington, 8 Bax. 539, and charge the stockholders with an ad valorem tax; but upon authority, we hold as stated above.

"This court has never decided, and, in the absence of the ruling of the Supreme Court of the United States in Farrington *v.* Tennessee 95 U. S. 679, would not now decide that the charter gives the owners of shares of stock any immunity or exemption from taxation on the shares. That question is now adjudged alone upon the authority of that case. It did not arise, and was not adjudged, in Bank of Commerce *v.* McGowan, 6 Lea, 705; in The State *v.* Butler, 13 Lea, 406, or in The State *v.* Butler, 2 Pickle, 633.

"Complainant seeks, in addition to what has already been stated, to recover from the bank $1,800.00 as privilege taxes for the years 1889, 1890 and 1891. These taxes are claimed from the corporation for the right of exercising its franchises—for the privilege of doing a banking business. Manifestly, the charter tax was intended
48 to cover this right or privilege. The language of the charter implies, that, in consideration of the public good and the payment of the tax therein specified, the State will allow the corporation to exercise the franchises granted without further taxation. City of Memphis *v.* Hernando Ins. Co., 6 Bax. 527; Union Bank *v.* State, 9 Yerg. 490.

"The case of New Orleans City, etc., *v.* New Orleans, 143 U. S. 192, is not, as we understand it, an authority against this ruling. There the contract afforded 'no evidence of an intention' to exempt the corporation from license or privilege tax (*ib.*, 195); here the intention to do so is clear and unmistakable. The charter tax was imposed primarily as a consideration for the corporate franchises and the right to exercise them. No other reasonable construction can be placed upon the words of the charter.

"The State is bound by its contract; and so, likewise, is the city of Memphis, which is but an arm or agency of the State government. This is true not only as to privilege taxes, but also with respect to the other taxes claimed in this case. All subjects of taxation covered by the charter tax are exempt from further assessment, whether made in behalf of the State, county or municipality.

"As to those subjects, the specified tax is in lieu of all the other taxes—State, county and municipal. Such is the undoubted meaning of the contract. City of Memphis *v.* Hernando Ins. Co., 6 Bax. 527; Union Bank *v.* The State, 9 Yerg. 490; Nashville *v.* Thomas, 5 Cold. 600."

The effect of the judgment in the case last-cited as an estoppel and bar to the assessment of taxes upon the capital stock of the appellant bank by the city of Memphis is the principal question in the case now before us.

For the present, however, we will continue the history of the litigations which involve the extent of the exemption.

The next decision in point is that of Shelby County *v.* Union & Planters' Bank, 161 U. S. 149. In that case the charter exemption here involved was construed as not including capital stock or surplus and accumulated profit, and as exempting only the shares of stock in hands of the shareholders. The Farrington case, 95 U. S. 679, is there construed as not inconsistent with the conclusion stated.

After the decision last cited the city of Memphis again sought to

tax the capital stock of the complainant bank and assessed same for the years 1896 and 1897.

The bank filed its bill in a chancery court of the State to enjoin the city from enforcing the collection of said tax and set out in its said bill two distinct grounds upon which it resisted the enforcement of said assessment.

1. That its capital stock was exempt under the charter provision already mentioned, and that such exemption had been duly adjudged in previous litigations which had the force of *res adjudicata.*

49 2. That the revenue law of the State provided that "no tax shall hereafter be assessed upon the capital stock of any bank, banking association or loan or trust, insurance or investment companies, but the shareholders in such bank or other association shall be assessed and taxed upon the market value of their shares of stock herein."

The city answered, asserting its power to make said assessments, and denied the exemption of the complainant's capital stock under its charter, and denied the force of the former decision as *res adjudicata.* After answering, the city filed a cross-bill for the purpose not only of enforcing the payment of the ad valorem tax so assessed against the capital stock of said bank, but also for the purpose of compelling payment of certain privilege taxes due the city for the same year.

Upon the pleadings and proofs the chancellor held the bank not liable for either tax, and perpetually enjoined the city from enforcing payment and dismissed the cross-bill. From this decree the city appealed to the supreme court of the State of Tennessee, which reversed the decree of the court below, holding that the capital stock was not exempt, but that the particular assessments complained of were invalid because the revenue law of the State did not provide for the assessment of the capital stock of any bank. It further held that the privilege tax was authorized under the existing law and the bank liable therefor.

In respect to the force and effect of the former decision of the same court adjudging the capital stock not liable to any general taxation as *res adjudicata*, the court held:

1. "That the effect of the decision in favor of the exemption of such capital stock from general taxation was nullified by the later decision of the Supreme Court of the United States in the case of Shelby County *v.* Union and Planters' Bank, 161 U. S. 149, holding that the charter exemption had no application to corporate capital stock.

2. "That its former judgment involved a different cause of action, to wit: the taxes assessed for years prior to the assessment then complained of, and that 'the plea of *res adjudicata* is to be limited to the taxes actually in litigation and is not conclusive in respect of taxes assessed for other and subsequent years.'"

It is plain from this history of the litigation involving the scope of the charter exemption claimed, and of like exemptions in other charters, that as a mere question of authority the exemption claimed in favor of appellant's capital stock does not exist, and that this

court in the interpretation of the charter exemption should accept as authoritative the opinion of the Supreme Court of the United
50 States in Shelby County *v.* Union and Planters' Bank, 161 U. S. 149.

But the duty of interpreting the scope and meaning of the exemption clause may be regarded as eliminated if it be true, as claimed, that the exemption exists as claimed because it has been so determined by the judgment relied upon as *res adjudicata*.

On this point, in New Orleans *v.* Citizens' Bank, 167 U. S. 371, 387, Mr. Justice White, speaking for the court, in a case where a charter exemption was claimed from general taxation by force of certain former judgments, said:

"Of course, if the judgments are the things adjudged and conclusively determined as between parties that the exemption of the bank under its charter exists, to the extent determined by the judgments, the duty in that regard of discussing the charter itself will be eliminated, since the effect of the thing adjudged will be to settle that question."

Passing then the interpretation of the scope of the charter exemption as an original question, and as effected by the decisions heretofore made considered as mere authorities, we come to the examination of the effect of the judgment of the supreme court of Tennessee pronounced in a suit wherein the present complainant and appellant, The Union and Planters' Bank, and The City of Memphis, the present defendant and appellee, were adversary parties; and in which it was adjudged and determined, that the charter tax of one-half of one per cent. was in lieu of all other taxes against the capital stock of said bank as well as against the stockholders upon their shares of stock, and that the capital stock of said bank was not liable to the assessment which has been made, nor for the license or privilege tax asserted against it.

That the suit in which said judgment was rendered was in the name of the State for the use of the City of Memphis, is of no moment.

The city was the real party and is as much concluded as if the suit had been prosecuted directly by it. New Orleans *v.* Citizens' Bank, 161 U. S. 371, 388; Scotland County *v.* Hill, 112 U. S. 183.

We come then to the question of the efficacy of the judgment in the prior case as adjudging conclusively that an exemption exists which extends to the capital stock of the complainant bank. The city taxes involved in the prior case were those assessed upon complainant's capital stock by the City of Memphis for the years 1888 to 1891, inclusive.

51 The taxes involved in the present case are taxes assessed by the same municipality and upon the same capital stock for the year 1899.

The cause of action in the two cases is, therefore, not the same, inasmuch as the demand in the adjudged case was taxes of certain years other than the years involved in this suit.

But the question of exemption of the capital stock from taxation other than that stipulated in the charter was necessarily presented

and determined adversely to the claim of the City of Memphis, upon identically the same facts upon which the right of exemption is now claimed.

Under the decisions of the Supreme Court of the United States, the mere fact that the present demand is for a tax for one year, and the demand in the adjudged case was for taxes for other and antecedent years, "does not prevent the operation of the thing adjudged." New Orleans *v.* Citizens' Bank, 167 U. S. 371, 396, 398; Southern Pacific R. R. *v.* U. S., 168 U. S. 1, 52; New Orleans *v.* Citizens' Bank.

In New Orleans *v.* Citizens' Bank, the court said:

"The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even although there be different demands, when the question upon which the recovery of the second demand depends has, under identical circumstances and conditions, been previously concluded by a judgment between the parties or their privies."

"This," said the court, "is the elemental rule, stated in the text books and enforced by many decisions of this court."

Among the cases cited as supporting this principle are the cases of Bank *v.* Beverly, 1 How. 134, 139; Cromwell *v.* Sac County, 94 U. S. 351, 353; and Last Chance Mining Company *v.* Tyler Mining Company, 157 U. S. 683, and the case of Heroman *et al. v.* Louisiana, 34 La. An. 805, 814.

This well-settled rule was applied in a case in which the controversy was as to the efficacy of prior judgments upon demands for taxes for years other than those involved in that case, which judgments had been rendered in local courts of the State of Louisiana. In that case it was also contended that public policy forbade the application of the principle stated to controversies as to taxation. After saying that this argument, if meritorious, should be addressed to the law-making and not to the judicial department, Mr. Justice White said, that "it was without real merit." "In its ulti-
52 mate aspect it asserts that no question concerning Government or public authority ought ever to be submitted to judicial investigation. Indeed, the contention is that there is no power in courts of justice to consider any question of taxation or render any judgment in relation thereto. That this is the result of the proposition is manifest from the fact that the very essence of judicial power is that when a matter is once ascertained and determined it is forever concluded when it arises again under the same circumstances and conditions between parties or their privies. To admit the judicial power on the one hand, and to deny on the other the very substance and essence of such power, is not only contradictory, but destructive of the fundamental conceptions upon which our system of government is based. Under this theory the cause under consideration should not be entertained, but should be dismissed. Accepting the argument in its full consequence, every judgment rendered by this court from the foundation of the Government, declaring a particular tax or burden unconstitutional, imparts no efficacy whatever. Every decree of this court enforcing taxation in order to discharge obligations previously contracted, where the right

to the tax was a part of the obligation, is deprived of the sanctity of the thing adjudged, for manifestly if the estoppel of the thing adjudged does not arise from a judgment preventing taxation, such an estoppel cannot also result from a judgment enforcing taxation."

But the defendants say, that whatever the efficacy of such a judgment ordinarily the judgment plead in bar and as a conclusive adjudication of the question of exemption here involved, is a judgment of the supreme court of Tennessee, and that under the well-settled rule of that court a judgment in a tax case is not conclusive between the parties except as to the particular taxes actually in litigation, and is not conclusive in respect of taxes assessed for other and subsequent years when relied upon as *res adjudicata*. State *v.* Bank of Commerce, 95 Tenn. 231; Bank *v.* Memphis, 101 Tenn. 154, 167.

The opinion of the court in that case was by Judge McAllister, who, upon this subject, said:

"We think the plea of *res adjudicata* in tax cases is to be limited to the taxes actually in litigation, and is not conclusive in respect of taxes assessed for other and subsequent years. Since this is not a Federal question, we decline to follow the ruling in New Orleans *v.* Citizens' Bank, 167 U. S. 371, in which it was held by a majority opinion that a judgment in a tax case is as conclusive of the taxes of other years as is of the taxes for the years actually involved.

53 "In State *v.* Bank of Commerce, 95 Tenn. 231, we said: 'These suits being for other years than those sued for in the Farrington case, that decision is not (as an adjudication) conclusive of the present case,' citing Cromwell *v.* County of Sac, 94 U. S. 351; Nesbett *v.* Riverside Ind. Dist., 144 U. S. 610; W. & W. R. R. *v.* Alsobrook, 146 U. S. 279; Keokuk R. R. *v.* Missouri, 152 U. S. 301. We adhere to that ruling."

The effect of the judgment in Bank *v.* Memphis as *res adjudicata* in avoiding the efficacy of the prior judgment now relied upon as *res adjudicata*, is not now before us, inasmuch as that judgment has not been plead or proven, the present hearing being upon a demurrer to the bill of complainant which does not set out the judgment in the case referred to. Turley *v.* Turley, 85 Tenn. 252, 261; Jourolmon *v.* Massengill, 86 Tenn. 81; Daniels Eq. Pl. 659, 661; United States *v.* Bliss, 172 U. S. 321; Bryan *v.* Campbell, 177 U. S. 649; Freeman on Judgments, sections 283, 332.

The case comes to this: The complainant pleads a judgment as conclusively establishing that a charter exemption exists giving it immunity from the tax here involved which judgment has no force or effect in the court which rendered it other than as a bar to another suit for the same identical taxes then in litigation, and which, under the law and usage of that State "is not conclusive in respect of taxes assessed for other and subsequent years."

The exemption from the ad valorem taxation of its capital stock claimed in this suit exists only, if it exists at all, by reason of the conclusive character of the thing adjudged in the prior case. But if that judgment would not be conclusive in respect to taxes for other

years in the courts of the jurisdiction in which it was pronounced upon what principle does it become of any greater efficacy when relied upon as *res adjudicata* in the courts of another jurisdiction?

By the law of England as it existed when the separation from our mother country occurred, foreign judgments were only *prima facie* evidence upon the merits of the matter in litigation, and when relied upon in the courts of England were subject to re-examination not only as to the jurisdiction of the court, but upon the merits. By the law of this country, a money judgment, rendered by a court of a foreign country having jurisdiction of the parties and the cause, in a suit brought by one of its citizens against one of ours, is only *prima facie* evidence and not conclusive, in an action brought here upon the judgment, when by the law of the foreign country
54 judgments of American courts are not recognized as conclusive. Hilton *v.* Guyot, 159 U. S. 113.

But such a judgment is conclusive, when sued upon here, as to all matters therein pleaded, and which might have been tried in the foreign court, if it be the judgment of a foreign jurisdiction, which, under like circumstances, regards the judgments of our courts as conclusive. Richie *v.* McMullen, 159 U. S. 235.

"Before the American Revolution," says Mr. Justice Gray, in the great opinion delivered by him for the court in Hilton *v.* Guyot, 159 U. S. 113, 181, "all the courts of the several colonies and States were deemed foreign to each other, and consequently, judgments rendered by any one of them were considered as foreign judgments, and their merits re-examinable in another colony, not only as to the jurisdiction of the court which pronounced them, but also as to the merits of the controversy, to the extent to which they were understood to be re-examinable in England."

"It was because of that condition of the law, as between the American colonies and States, that the United States at the very beginning of their existence as a nation, ordained that full faith and credit should be given to the judgments of one of the States of the Union in the courts of another of those States."

By section 1 of article 4 of the Constitution of the United States it is accordingly provided that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State; and the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be, and the effect thereof."

Under this power, the Congress did, at an early day, provide, not only for the mode of authenticating the records and proceedings of the courts of any State, but enacted, "that the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usages in the courts of the State from whence the said records are or shall be taken." Revised Statutes, section 905.

Judgments rendered in one State of the Union, when proved in the courts of another, differ from judgments recovered in a foreign country only in respect to their conclusiveness upon the merits, if

rendered by a court having jurisdiction over the parties and the cause of action, and this difference is wholly due to the constitutional and legislative provision already cited. Mills *v.* Duryea, 7 Cranch, 481, 484, 485; D'Arcey *v.* Ketchum, 11 How. 165, 175, 176; Hanley *v.* Donoghue, 116 U. S. 1, 4.

55 In Wisconsin *v.* Pelican Ins. Co., 127 U. S. 265, 292, it was said:

"Judgments recovered in one State of the Union, when proved in the courts of another government, whether State or national, within the United States differ from judgments recovered in a foreign country in no other respect than in not being re-examinable on their merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties."

In Hilton *v.* Guyot, 159 U. S. 113, 189, it was said, that "the decisions of this court have clearly recognized that judgments of a foreign State are *prima facie* evidence only, and that but for these constitutional and legislative provisions, judgments of a State of the Union, when sued upon in another State, would have no greater effect."

The statutory provision, section 905, extends to every court, "within the United States," and, therefore, to courts of the United States, and such courts are, therefore, bound to give to judgments of State courts the same faith and credit which the courts of another State are bound to accord to them. Kansas City, etc., R'd Co. *v.* Morgan, 21 C. C. A. 468; Pennoyer *v.* Neff, 95 U. S. 714, 733; Freeman on Judgments, sec. 575.

Neither the constitutional nor legislative provision referred to, requires that any such judgment when proven in a court of the United States or of another State shall be given any greater efficacy or degree of conclusiveness than it has by the "law or usage" of the State from which it comes. The plain provision of the statute is, that such judgments "shall have such faith and credit given to them in every court within the United States *as they have by law or usage in the courts of the State from whence the said records are or shall be taken.*"

Nor does any principle of general law or natural justice demand that any greater efficacy shall be accorded to a judgment of any State or foreign country, when either sued upon or plead as *res adjudicata* in the courts of another jurisdiction, than is accorded to it by the law or usage of the State or country from which the judgment comes.

If such judgment be given the effect and conclusiveness accorded to it at home, every demand of the positive law as well as of justice has been answered.

To give it any greater efficacy than it has in the State or country in which it was rendered would be in opposition to every principle of international law and contrary to principles of moral justice.

56 Those defenses which might be made to it at home and those only can be made in any other jurisdiction where it is sued upon or plead in bar. These principles find support in the utterances of a multitude of judges, though in none of the cases

cited, does the precise question here at issue seem to have arisen. Chicago and Alton R. *v.* Wiggins Ferry Co., 108 U. S. 18, 20; Chase *v.* Curtis, 113 U. S. 452, 460; Suydam *v.* Barber, 18 N. Y. 468, 472; Renaud *v.* Abbott, 116 U. S. 277, 287; Hanley *v.* Donoghue, 116 U. S. 1; Candee *v.* Clark, 2 Mich. Rep. 257; Armstrong *v.* Carson, 2 Dallas, 302; Miles *v.* Caldwell, 2 Wall. 35; Green *v.* Sarmiento, 3 Wash. C. C. R. 17; King *v.* McLean Asylum, etc., 12 C. C. A. 145, 164, 165; Wood *v.* Watkinson, 17 Conn. 500, 504, 505; Baugh *v.* Baugh, 4 Bibb (Ky.) 556; Sweet *v.* Brockley, 53 Maine 346; Milan *v* Fitz James, 1 Bos. & Pul. 138; Smith *v.* Nichols, 5 Bing. N. C. 208; Embry *v.* Palmer, 107 U. S. 3, 10; Poorman *v.* Crone, Wright's Rep. 347; Freeman on Judgments, section 575; Wells *Res Adjudicata*, sec. 531; Bates Federal Eq. Practice, section 424.

In Chicago and Alton Railroad Co. *v.* Wiggins Ferry Co., cited above, speaking of the effect to be attached to the judgment of the State of Missouri, construing a law of another State, the court said:

"So long as the judgment stands, it cannot be impeached collaterally in the courts of the United States any more than in those of the State, by showing that if due effect had been given to the laws it would have been the other way. If it has the effect of an estoppel, as is claimed, it will continue to have that effect until reversed or set aside in some appropriate form of proceeding instituted directly for that purpose. The courts of the United States must give it the same effect as a judgment that it has in the courts of the State. Whether, as a judgment, it operates as an estoppel, does not depend on the Constitution or laws of the United States, but on the effect of a judgment under the laws of Missouri."

In Suydam *v.* Barber, 18 N. Y. 468, 472, the suit was against the members of a firm upon a partnership obligation. One of the partners defended upon the ground that the plaintiffs had brought an action against another of the partners alone, in a court of Missouri and recovered judgment. This Missouri judgment was plead as operating as an extinguishment of the liability of the other partners.

According to the common law, which prevailed in New York, a judgment against one of several joint debtors, obtained in an action against him alone, was a bar to an action against the others.
57 But it was shown that all contracts which by the common law were joint only, were by the law of Missouri joint and several, and that the effect of a judgment against one thus jointly and severally liable was not to extinguish the obligation or discharge the liability of others.

The New York court held the judgment inoperative as a bar, and, among other things, said:

"The consequences of a judgment, in respect to its effect as a merger or extinguishment of the original demand, are a part of the law under which the judgment itself is rendered, just as much as are those other common consequences of judgments, that a party may have execution upon them and that they are not re-examinable on the merits of the controversy determined by them.

"In all these particulars, the effect of a judgment, in the government where it is rendered, is the subject of positive regulation by

that government, just as it is the subject of positive regulation by what process and what courts judgments shall be rendered at all."

Referring to the effect of judgments of one State when plead in another under the constitutional and legislative provisions in respect to the faith and credit to be given to such judgments by the courts of the United States and of other States, the court said:

"While the rule just stated as to the effect of judgments of one State in the courts of another is clear, as is established by the cases cited by Judge Cowen, and by numerous others, yet no case can be found where a greater effect is given to the judgment of any State in the courts of another than belongs to it in the State where it was rendered. Indeed, such a rule would be against all reason, and not only out of the policy of the provisions of the Constitution and laws of the United States on that subject, but against and irreconcilable with all policy and with the plainest and fundamental principles of justice."

Finding that under the law of Missouri the effect of the judgment was not to extinguish the obligation sued upon or discharge the other persons liable, it was held, that no greater effect should be given to such a judgment when relied upon as a bar to a suit against the other parties liable upon the original contract.

In Wood *v.* Watkinson, cited above, the Connecticut court said:

"Taking it for granted, that when a judgment in the court of a sovereign State, or one of the States of this Union, is sought to be enforced in another State than that in which it was rendered, there is no objection to its validity on the ground of a want of juris-
58 diction in that court, it is well settled that no greater effect is to be given to it than it would have in the State where it was rendered. It has no higher dignity in any other State than in the one where it was pronounced; and hence, if in the courts of the State where the judgment was rendered, it is inconclusive, or if it is inquirable into there, during a particular period, or on certain conditions, it will be open to investigation, to the same extent, everywhere else. Armstrong *v.* Carson's Ex'rs, 2 Dall. 302; Green *v.* Sarmiento, 1 Pet. C. C. Rep. 74; Spencer *v.* Sloo, 8 Lou. R. 290; Curtis *v.* Gibbs, 1 Pennington's R. 399; Baugh *v.* Baugh, 4 Bibb, 556; Rogers *v.* Coleman & *ux.*, 1 Hardin's R. 413, 420; Smith *v.* Nicolls, 5 Bing. N. C. 208; (35 E. C. L. 88).

"So, if a judgment operates in the State where it was rendered only *in rem*, it will not elsewhere be enforced *in personam*. It results conclusively from this principle, or is rather involved in it, that if a judgment in a State where it is recovered, has not the effect of binding personally the defendants, or any of them, in the suit in which it was rendered, no greater effect will be given to it in any other State where it is endeavored to be enforced. It derives its obligation only from the laws of the State in which it is pronounced. A judgment creates a debt, on the ground that a liability is ascertained and established, by the decision of a tribunal, which might rightfully adjudicate upon it; and such adjudication derives its whole force and effect from the laws of the State under whose authority it is made." * * *

That court added:

"There is nothing in our national Constitution on this subject, which, according to any construction which has ever been claimed for it, gives the judgment of one of the States, when sought to be enforced in another, a greater effect than it would have in the State where it was rendered."

There is nothing which precludes this court from determining for itself whether the charter exemption claimed exists to the extent of granting to the appellant immunity from the ad valorem taxes assessed against its capital stock by the defendant, The City of Memphis, except the supposed conclusive effect of the thing adjudged in the prior case which is relied upon as settling the question without looking into the terms of the contractual exemption.

Finding, as we do, that the judgment in the prior case is not, under the law of Tennessee, conclusive when the second suit is a demand for taxes of other years, subsequently assessed, and that in the courts of that State neither party could plead that judgment as a bar to a suit for taxes for other years, we are, therefore, not precluded from looking into the charter. The opinion of the
59 Supreme Court of the United States in the two cases of Bank of Commerce *v.* Tennessee, 161 U. S. 134, and Shelby County *v.* Union and Planters' Bank, 161 U. S. 149, are binding authorities upon us and require that we shall hold that the capital stock of the appellant bank is not exempt from ad valorem taxation by reason of the charter exemption claimed by the Union and Planters' bank.

The demurrers which raise the question we have discussed were properly sustained and the decree dismissing the bill is accordingly affirmed.

60 And afterwards to wit on December 16th 1901 an order was entered in said cause which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

UNION & PLANTERS' BANK
vs.
CITY OF MEMPHIS.

Appeal to the Supreme Court in this case is allowed and bond fixed at $500.

And on the same day to wit on December 16th 1901, a petition for appeal was filed clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

UNION & PLANTERS' BANK, Appellant,
vs.
THE CITY OF MEMPHIS, Appellee. } #924.

Appealed from the circuit court of the United States for the western district of Tennessee.

The petitioner, the above-named appellant, The Union & Planters' Bank of Memphis, Tennessee, respectfully states and shows to the court that herein a decree was rendered in favor of the re-
61 spondents and against it, as by an inspection of the record will appear, on the 21st of October last, wherein this court adjudged and decreed that the decree of the circuit court of the United States for the western district of Tennessee in this cause be and the same is affirmed, with costs.

And petitioner avers that in the proceedings in this cause it affirmed, among other things, that the tax laws set forth in the pleadings, impaired the obligation of its charter provision in these words:—"That said company shall pay to the State of Tennessee, an annual tax of one-half of one per cent. on each share of capital stock subscribed, which shall be in lieu of all other taxes," and that its capital stock was exempt under the charter provision aforesaid, from the taxes sought to be collected by the judgment of the supreme court of the State of Tennessee upon a judgment and decree set forth and relied on in the pleadings, upon identically the same state of facts and between the same parties.

And petitioner shows to the court that by the judgment and decree herein entered, this court denied the propositions of the appellant to be well founded in law, and affirmed by its decree that the aforesaid clause of its charter did not contractually exempt it from the payment of the taxes specified, and also affirmed that the judgment, of the supreme court relied on must be limited to the taxes that were in suit between the parties hereto in the previous litigation, and the estoppal of that judgment did not extend to and embrace taxes of other years, though the taxes were upon the same subject-matter of taxation, and did thereby affirm that the revenue laws of Tennessee set forth in the pleadings imposing taxes upon the capital stock of the appellant, did not impair the obligation of the contract as above set forth, which the appellant affirmed and the respondent denied.

62 Wherefore, the appellant prays that it be granted an appeal to the Supreme Court of the United States, conformably to the practice of the court in such cases made and provided, upon its entering into a bond conditioned as the law requires.

UNION & PLANTERS' BANK.
G. R. READ, *Pres't.*
WM. H. CARROLL,
TIM. E. COOPER,
Att'ys for Petitioner.

And on the same day to wit on December 16th 1901, assignments of error were filed which read and are as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

UNION & PLANTERS' BANK, Appellant,
vs.
THE CITY OF MEMPHIS, Appellee. } #924.

Comes the appellant and says that in the record and proceedings in the above-entitled cause and court, there is manifest error, and it assigns as error to the decree of the court herein, entered on the 21st of October 1901;

1.

The holding by the court that the tax laws set forth in the pleadings, did not impair the contract between the appellant and the State of Tennessee, by which the appellant claimed an exemption from taxation under a provision in its said charter, as follows: "That the said company shall pay to the State of Tennessee, an annual tax of one-half of one per cent. on each share of capital stock subscribed, which shall be in lieu of all other taxes."

63

2.

In affirming that the former litigation between the City of Memphis and the appellant, where it was sought to enforce a municipal assessment for taxes upon its capital stock for the years 1888, 1889 and 1890, did not conclusively adjudge that the capital stock of the appellant was contractually exempt from the payment of ad valorem taxes to the City of Memphis, and did not estop the City of Memphis from affirming that the true and proper construction and meaning of the said charter was not to exempt appellant's capital stock from ad valorem taxes to the said city.

3. In affirming the judgment of the circuit court of the United States for the western district of Tennessee, sustaining the demurrers of the respondent to the merits.

Wherefore, the appellant prays that the said decree may be reversed, vacated and annulled.

WM. H. CARROLL &
TIM. E. COOPER,
Counsel for Appellant.

And afterwards on the same day to wit on December 16th 1901, proof of service of notice of appeal was filed which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

UNION & PLANTERS' BANK, Appellant,
vs.
THE CITY OF MEMPHIS, Appellee.

The defendants and their counsel, are hereby notified that we will apply at the opening of the court on Monday, December 16th
64 next, or as soon thereafter as practicable, for an appeal from the judgment and decree entered in the above-entitled cause, on the 21st of October last, when and where they can attend and oppose if they see proper, the application.

WM. H. CARROLL &
TIM. E. COOPER,
Counsel for U. & P. Bk.

Service in the above-entitled cause, of notice of an application for an appeal, acknowledged on this 5th day of Dec. 1901.

JOHN H. WATKINS,
Att'y for City of Memphis.

And afterwards to wit on December 26th 1901, bond on appeal was filed clothed in the words and figures as follows:

Bond on Appeal.

65 Bond on writ of error or appeal.

Know all men by these presents, that we, the Union and Planters' Bank of Memphis, as principal, and S. V. Read and Nolan D. Fontaine, as sureties, are held and firmly bound unto the City of Memphis in the full and just sum of five hundred dollars to be paid to the said City of Memphis certain attorneys, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of December in the year of our Lord one thousand nine hundred and *ninety* one.

Whereas, lately at a session of the United States circuit court of appeals for the sixth circuit in a suit depending in said court, between Union & Planters' Bank and the City of Memphis, a decree a was rendered against the said Union & Planters' Bank and the said Union & Planters' Bank having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said —:

Now, the condition of the above obligation is such, that if the said Union & Planters' Bank shall prosecute said appeal to effect, and answer all damages and costs if it fail to make its plea good,

then the above obligation to be void; else to remain in full force and virtue.

[SEAL.] UNION & PLANTERS' BANK OF MEMPHIS, [SEAL.]
By S. V. READ, *P't.* [SEAL.]
S. V. READ. [SEAL.]
NOLAN D. FONTAINE.

Sealed and delivered in presence of—
——— ———.

Approved by—
HORACE H. LURTON, *Judge, etc.*

66 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record in the case of Union & Planters' Bank of Memphis *vs.* City of Memphis No. 924, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the city of Cincinnati, Ohio, this sixth day of January A. D. 1902

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: File No. 18,369. U. S. C. C. of appeals, 6th circuit—Term No. 221 The Union and Planters' Bank of Memphis—appellant—*vs.* The City of Memphis. Filed January 13, 1902.